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Attorneys for Defendant,
COUNTY OF SACRAMENTO
(erroneously sued herein as “Sacramento County
Sheriff’s Department”)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YAPHETTE GEIGER; JETHRO GEIGER; K.S., a minor, by and through their Guardian, BRANDIE SMITH; K.G., a minor, by and through their Guardian, BRANDI SMITH; and N.G., a minor, by and through their Guardian, ASIA LEE HERON; and JW GEIGER) No. 2:22-cv-0043 JAM DB
Plaintiffs) JOINT STIPULATION AND
v.) PROTECTIVE ORDER
COUNTY OF SACRAMENTO, SACRAMENTO COUNTY SHERIFF’S DEPARTMENT and DOES 1 through 100, inclusive,)
Defendants.)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation is warranted. The Parties have determined that certain documents that may be subject to disclosure in this action contain information that is (a) confidential, sensitive, or potentially invasive of an individual’s privacy interests; (b) not generally known; and (c) not normally revealed to the public or third parties, or if disclosed to third parties, would require such third parties to maintain the information in

1 confidence. This confidential or private information warrants special protection from public
2 disclosure and from use for any purpose other than prosecuting this litigation.

3 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
4 Stipulated Protective Order on the basis that the documents described herein and anticipated to
5 be subject to disclosure in this matter contain confidential and protected information that may
6 only be disclosed and/or produced subject to the following terms, unless timely challenged
7 subject to the provisions in Section 6, below. The parties acknowledge that this Order does not
8 confer blanket protections on all disclosures or responses to discovery and that the protection it
9 affords from public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 11.3, below, that this Stipulated Protective Order does not
12 entitle them to file confidential information under seal; Local Rule 141 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks permission from
14 the court to file material under seal.

15 **2. DEFINITIONS**

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
17 information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: Protected Material, as defined in Section
19 2.13 below and marked as “Confidential” pursuant to the terms of this order.

20 2.3 Counsel: Counsel of Record (as well as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
24 or manner in which it is generated, stored, or maintained (including, among other things,
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
26 responses to discovery in this matter.

27 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
28 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a

consultant in this action.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Counsel (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is within the scope of this order as described in Section 3 below and thereafter designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The documents eligible for protection under this Order are:

- Law enforcement personnel file documents and materials that concern, relate, or refer to fitness for duty reports and evaluations, performance evaluations, discipline, awards, commendations and recognition, reassignments or position changes, employee personal data, and related records; and
- Sheriff’s Department internal investigation documents and materials including internal affairs investigation files, citizen complaints, personnel file documents and data, incident reports, log books, and other related records.
- Investigative materials containing private information of individuals or subject to

ongoing investigations, including, but not limited to, homicide investigation, and investigation into related criminal activities of decedent and Plaintiff.

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents,

1 items, or communications for which protection is not warranted are not swept unjustifiably within
2 the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
6 and burdens on other parties) expose the Designating Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it designated
8 for protection do not qualify for protection, that Designating Party must promptly notify all other
9 Parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
12 or Discovery Material that qualifies for protection under this Order must be clearly so designated
13 before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
17 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
18 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
19 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents or materials available for inspection
21 need not designate them for protection until after the inspecting Party has indicated which material
22 it would like copied and produced. During the inspection and before the designation, all of the
23 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
24 Party has identified the documents it wants copied and produced, the Producing Party must
25 determine which documents, or portions thereof, qualify for protection under this Order. Then,
26 before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL"
27 legend to each page that contains Protected Material. If only a portion or portions of the material
28 on a page qualifies for protection, the Producing Party also must clearly identify the protected

1 portion(s) (e.g., by making appropriate markings in the margins).

2 (b) for testimony given in deposition or in other pretrial proceedings, that the
3 Designating Party identify on the record, before the close of the deposition, hearing, or other
4 proceeding, all protected testimony.

5 (c) for information produced in some form other than documentary and for any
6 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
7 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
8 If only a portion or portions of the information or item warrant protection, the Producing Party, to
9 the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the Designating Party's
12 right to secure protection under this Order for such material. Upon timely correction of a
13 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
14 in accordance with the provisions of this Order.

15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality. Such challenges must be made within 120 days of service of the materials
18 designated as confidential and/or subject to this Order. Failure to mount a challenge to a
19 confidentiality designation within this time frame constitutes a waiver of the challenge unless the
20 court, for good cause, excuses the failure.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
22 providing written notice of each designation it is challenging and describing the basis for each
23 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
24 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
25 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
26 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
27 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
28 Party must explain the basis for its belief that the confidentiality designation was not proper and

1 must give the Designating Party an opportunity to review the designated material, to reconsider
2 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
3 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
4 has engaged in this meet and confer process first or establishes that the Designating Party is
5 unwilling to participate in the meet and confer process in a timely manner.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
7 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
8 Eastern District Local Rule 251 within 21 days of the initial notice of challenge or within 14 days
9 of the parties agreeing that the meet and confer process will not resolve their dispute, whichever
10 is earlier. Each such motion must be accompanied by a competent declaration affirming that the
11 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
12 Failure by the Designating Party to make such a motion including the required declaration within
13 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for
14 each challenged designation, unless the court, for good cause, excuses the failure. In addition, the
15 Challenging Party may file a motion challenging a confidentiality designation at any time if there
16 is good cause for doing so, including a challenge to the designation of a deposition transcript or
17 any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
18 competent declaration affirming that the movant has complied with the meet and confer
19 requirements imposed by the preceding paragraph.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
23 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
24 file a motion to retain confidentiality as described above, all parties shall continue to afford the
25 material in question the level of protection to which it is entitled under the Producing Party's
26 designation until the court rules on the challenge.

27 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or

1 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
2 defending, or attempting to settle this litigation. Prior to trial, such Protected Material may be
3 disclosed only to the categories of persons described in Section 7.2 below and under the conditions
4 described in this Order. The parties anticipate disagreement at the time of trial regarding the use
5 of Protected Material. However, the parties agree that Protected Materials should not be deemed
6 inadmissible solely due to their status as a Protected Material. Should any party seek to introduce
7 Protected Material during trial, the parties agree that this issue and the handling of the Protected
8 Material at the time of trial, including any limitations on use, distribution, publicity, and viewing,
9 should be addressed at the Final Pretrial Conference.

10 When the litigation has been terminated, a Receiving Party must comply with the
11 provisions of section 12 below (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and in
13 a secure manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
15 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

17 (a) the Receiving Party’s Counsel in this action, as well as employees of said
18 Counsel to whom it is reasonably necessary to disclose the information for this litigation and who
19 have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
20 A;

21 (b) the officers, directors, and employees of the Receiving Party to whom disclosure
22 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
23 Agreement to Be Bound” (Exhibit A);

24 (c) the Receiving Party may show any information or item designated
25 “CONFIDENTIAL” to a third party to whom disclosure is reasonably necessary for this litigation
26 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
28 reasonably necessary for this litigation and who have signed the “Acknowledgment and

Agreement to Be Bound” (Exhibit A);

(e) the court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL”

before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

11. MISCELLANEOUS

11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future or by mutual agreement of the Parties in writing

11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order

no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

11.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Eastern District Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Receiving Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

12. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: August 11 , 2022

LONGYEAR & LAVRA, LLP

By: /s/ Nicole M. Cahill

VAN LONGYEAR

NICOLE M. CAHILL

Attorneys for Defendant,

County of Sacramento

Dated: August 11, 2022

MOSLEY & ASSOCIATES

By: /s/ Nathalie Meza Contreras [authorized on 8-3-22]

WALTER MOSLEY

CARLOS E. MONTOYA

NATHALIE MEZA CONTRERAS

Attorneys for Plaintiffs

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

1. Requests to seal documents shall be made by motion before the same judge who will decide the matter related to that request to seal.

2. The designation of documents (including transcripts of testimony) as confidential pursuant to this order does not automatically entitle the parties to file such a document with the court under seal. Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or other

1 authority for sealing, the requested duration, the identity, by name or category, of persons to be
2 permitted access to the document, and all relevant information.” L.R. 141(b).

3 3. A request to seal material must normally meet the high threshold of showing that
4 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially
5 related” to the merits of a case, the request to seal may be granted on a showing of “good cause.”
6 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016);
7 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

8 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of
9 certain documents, at any court hearing or trial – such determinations will only be made by the
10 court at the hearing or trial, or upon an appropriate motion.

11 5. With respect to motions regarding any disputes concerning this protective order which
12 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local
13 Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an ex
14 parte basis or on shortened time.

15 6. The parties may not modify the terms of this Protective Order without the court’s
16 approval. If the parties agree to a potential modification, they shall submit a stipulation and
17 proposed order for the court’s consideration.

18 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement
19 of the terms of this Protective Order after the action is terminated.

20 8. Any provision in the parties’ stipulation that is in conflict with anything in this order is
21 hereby DISAPPROVED.

22 DATED: August 12, 2022

/s/ DEBORAH BARNES

UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ in the case of *Geiger v. County of Sacramento, et al.*, Case No. 2:22-cv-00043-JAM-DB. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____